IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL WRIT PETITION NO.3828/04

Savitri Devi & Anr. **Versus** State & Ors.

DATE OF ORDER :: 16/04/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. K.C. Sharma, for petitioners
Mr. Brij Sharma for Mr. R.B. Mathur, for respondents

***

Instant petition has been filed by plaintiff-petitioner assailing the order dated 21st May, 2004 whereby his application filed under O.6 R.17 CPC was dismissed by the learned trial Judge - suit for partition was filed by impleading his mother, father and brothers as defendants.

The suit was filed in 2001. The written statement was filed by the defendants on 19th March, 2002 and thereafter, rejoinder was also filed by plaintiff, but before framing of issues, one of the defendants i.e. mother Smt. Ram Pyari died on 25th September, 2002 and suit being for partition, the plaintiff-petitioner sought amendment. Hence, application was filed by the plaintiff-petitioner seeking amendment in the plaint. Learned trial Judge dismissed the said application.

Counsel for petitioner submits that issues were yet to be framed and since it was basically filed for partition and after death of his

mother, property belonged to her was also available for partition and necessary amendments were sought by seeking amendment under O.6 R.17 CPC.

Counsel for respondents has opposed his request and submits that property belonged to their mother Smt. Ram Pyari was not available for partition and the defendant became owner by virtue of Will executed in his favour.

I have considered the submission of both the counsel and perused the material available on record.

So far as the scope of seeking amendment under O.6 R.17 is concerned, the Apex Court has examined the case of **Kailash Vs. Nankhu & Ors [(2005) 4 SCC-480]** wherein it has been observed that trial is deemed to commence when the issues are settled and the case is set down for recording of evidence which has also been examined recently in **Ajendraprasadji N. Pande Vs. Swami Keshavprakeshdasji N. [2007 AIR SCW 513]**.

In the instant case, undisputedly issues were yet to be framed and amendment application was filed much before thereof. Thus, the trial was yet to commence in the matter and if the plaintiff-petitioner is not permitted to make amendment, certainly it will multiply the litigation which is never the intention of

legislature. The amendment has been provided only to shorten the litigation as far as possible.

Since the development has taken place at a later stage, certainly application was filed immediately thereafter and even otherwise, when trial is yet to commence, I do not find any justification for rejection of their application.

Consequently, the order dated 21st May, 2004, so far as rejecting his application filed under O.6 R.17 CPC is concerned, is hereby quashed and set aside.

Learned trial Judge is directed to proceed in the matter after taking amended plaint on record.

With the above observations, the writ petition stands disposed of.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.